

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON TAXATION

Call to Order: By **VICE CHAIRMAN BOB DEPRATU**, on February 9, 1999
at 9:00 A.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Gerry Devlin, Chairman (R)
Sen. Bob DePratu, Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Dorothy Eck (D)
Sen. E. P. "Pete" Ekegren (R)
Sen. Jon Ellingson (D)
Sen. Alvin Ellis Jr. (R)
Sen. Bill Glaser (R)
Sen. Barry "Spook" Stang (D)

Members Excused: None

Members Absent: None

Staff Present: Sandy Barnes, Committee Secretary
Lee Heiman, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 82, 2/3/1999; HB 137,
2/3/1999; HB 138, 2/3/1999; HB
139, 2/3/1999
Executive Action: HB 137, HB 82, HB 138, HB 139

HEARING ON HB 82

Sponsor: REPRESENTATIVE HAL HARPER, HD 52, HELENA

Proponents: Pat McKelvey, Chairman, State Tax Appeal Board
Dave Woodgerd, Chief Council, Department of Revenue

Opponents: None

Opening Statement by Sponsor:

REP. HAL HARPER, HD 52, Helena, said **HB 82** is a bill requested by the State Tax Appeal Board after meeting with local tax appeal boards across the state and getting suggestions on ways to improve and simplify the present appeal board system. This bill revises the procedures that apply to county tax appeal boards, specifies certain dates that they are to be in session, specifies the date for notice, and it specifies where applications for the reduction of property taxes are going to be submitted. He suggested one amendment on page 1, line 8, the bill title, changing "filing" to "submission," **EXHIBIT (tas32a01)**.

REP. HARPER went through the changes in the bill. He said starting with page 2, line 12, the language is merely a rewording of the present requirements from the Department of Revenue to notify the local boards that notices of classification and appraisal have been mailed. Page 3, line 21, again, is a language change that clarifies that local board members are only paid for the days they meet. Page 3, line 29, establishes a definite time for local board sessions to start and to end. Page 4, line 8, is the notice requirements for letting the taxpayer know that they have the right to appeal, the statutory deadline for filing of the appeal, where to file an appeal and when the local board will be in session and actually conducting hearings. And finally, page 4, line 22, specifies where the appeals form is obtained and where it should be submitted.

REP. HARPER said this bill makes a lot of sense. It simplifies the process and makes it easier to deal with the appeal process.

Proponents' Testimony:

Pat McKelvey, Chairman, State Tax Appeal Board, submitted written testimony, **EXHIBIT (tas32a02)**. He said he wanted to expand on why the State Tax Appeal Board is asking for these changes. In the 12 years that he has been a part of the Board, there has always been a problem with the session lengths and with session start points and end points for the county tax appeal board members. He said this bill is a result of a meeting with the county tax appeal boards in answer to their suggestions for needed changes in the tax appeal process.

Mr. McKelvey said that the language for the definite start and definite length of the session was one of the most important things that they requested. Not only did they not have a set session time and length, often they were requesting extensions

beyond the 60 days, so the change was made to six months. They can still request an extension if necessary.

Mr. McKelvey went on to say that the issue of the publication of the notice was very confusing, so that has been set as May 15th, which allows plenty of time for the jurisdictional response. This also clarifies where the appeal form was to be submitted and how that is handled, which will also simplify that process. He said this bill should simplify the process and make it more workable for the tax appeal boards and the taxpayers.

Dave Woodgerd, Chief Council, Department of Revenue, said that the Department feels this bill is good for the taxpayer, and it will resolve some issues that the Department of Revenue has had.

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. HARPER had no closing statement.

HEARING ON HB 138

Sponsor: REPRESENTATIVE HAL HARPER, HD 52, HELENA

Proponents: Robert Turner, Department of Transportation
Ronna Alexander, Montana Petroleum Marketers
Association

Opponents: None

Opening Statement by Sponsor:

REP. HAL HARPER, HD 52, Helena, said **HB 138** eliminates the annual license renewal fee of \$200 for wholesale gasoline and special fuel distributors. It eliminates the requirement for fuel dealers to go through a licensing process in order for their customers to obtain a refund for fuel used off roads. The Fiscal Note reflects a cost to the state of about \$8,800 a year, but the Department feels that their staff time could be better spent doing other things, and it is their suggestion that these be eliminated.

Proponents' Testimony:

Robert Turner, Bureau Chief, Fuel Tax Management and Analysis Bureau, Department of Transportation, said the Department

supports **HB 138**. He said that under the present law there are about six categories of people who fall under "distributors." Of those six categories, the only person who actually pays an annual license fee is the wholesale distributor of gasoline who submits the dollar amount to the state, so it is really an equity issue. Under this bill, these people will still be required to be licensed, but they will not have to pay the \$200.

Ronna Alexander, Montana Petroleum Marketers Association, who are licensed wholesalers and distributors, said that of their current membership base of 135, approximately 60 of those are licensed. She said this is the Department's idea, and the Association commends them for eliminating this fee, and urges support for **HB 138**.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. EKEGREN asked **Mr. Turner** if the Department could save costs if the application and the paperwork were not necessary, and he replied that it is an equity issue rather than a cost-saving issue.

Closing by Sponsor:

REP. HARPER had no closing statement.

HEARING ON HB 139

Sponsor: REPRESENTATIVE HAL HARPER, HD 52, HELENA

Proponents: Robert Turner, Department of Transportation
Bob Gilbert, Montana/Wyoming L.P. Gas Association

Opponents: None

Opening Statement by Sponsor:

REP. HAL HARPER, HD 52, Helena, said that **HB 139** is a bill that changes from monthly to quarterly filing requirements for liquefied petroleum gas and compressed natural gas dealers. He said the Fiscal Note says there is no net impact, but in fact, under assumption No. 3, the state will lose \$171.19 in interest.

Proponents' Testimony:

Robert Turner, Bureau Chief, Fuel Tax Management and Analysis Bureau, Department of Transportation, said the Department favors

this bill. He said this bill changes the monthly filing requirement for CNG and LPG filers to quarterly filing requirements, and will serve to reduce paperwork for both the dealers and the Department.

Bob Gilbert, Montana/Wyoming L.P. Gas Association, said his organization is in strong support of **HB 139**. He said it saves paperwork, and it saves time, which means saving money.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. ELLIS asked **Mr. Turner** if this will save time within the Department, considering that they will be getting one-fourth as many reports, and he said it would save some key-punching time, which is minimal, because once it is on the system, it is audited on the system.

Closing by Sponsor:

REP. HARPER had no closing statement.

HEARING ON HB 137

Sponsor: REPRESENTATIVE SHIELL ANDERSON, HD 25, LIVINGSTON

Proponents: Dave Woodgerd, Chief Council, Department of Revenue
Pat McKelvey, Chairman, State Tax Appeal Board

Opponents: None

Opening Statement by Sponsor:

REP. SHIELL ANDERSON, HD 25, Livingston, said the purpose of **HB 137** is to establish new procedures for resolving disputes between the Department of Revenue and persons or other entities, and to provide for an office of dispute resolution with the Department. This is a step to make the Department of Revenue more user friendly. This procedure is less legalistic, which means it is easier to use and friendlier. The process begins with alternative dispute resolution methods such as mediation and other dispute resolution practices, which are less confrontational, allowing the parties to a dispute to identify the problem and involve themselves in the process of resolving the problem. There is also a more stringent time frame within which disputes must be resolved.

Proponents' Testimony:

Dave Woodgerd, Chief Council, Department of Revenue, said that there are essentially two different processes on appeals. **HB 82** deals with property tax issues, and **HB 137** deals with appeals that are outside the property tax area that are handled within the Department of Revenue. He said the present process is too formal, has too many deadlines in it, too many requirements in it, makes the taxpayers jump through too many hoops, and often makes the process longer than it needs to be. This will make it possible to handle these issues in a more friendly and more timely manner.

Mr. Woodgerd said that the mediation process can probably resolve many of the appeals at that level, but also auditors will be given the authority to resolve as many issues as possible at their level so we don't get into this process unless it is absolutely necessary.

Pat McKelvey, Chairman, State Tax Appeal Board, said that anything that can be done to focus an issue before it comes to the State Tax Appeal Board would be a good thing. He said it does not affect the operations of the county tax appeal boards in any way because the issues that are dealt with in this process are issues that normally would have come directly to the State Tax Appeal Board because of a decision of the Department of Revenue.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. GLASER asked **Mr. Woodgerd** about redefining "person," because in the Constitution, "person" is more than an individual. It could be a corporation, as an example. **Mr. Woodgerd** said there is nothing that is intended here other than to try to clarify the bill. He referred to page 1, line 16, for example, which has crossed out the word "taxpayers" and put in "persons or other entities." So, he said, we are including persons, but we are also including entities other than persons by saying other entities.

SEN. ECK asked if "persons" also in this case means "corporation," because it does not say it is limited to individuals. **Mr. Woodgerd** referred to page 1, line 26, where the term "other entity" is defined as including businesses, corporations and similar enterprises, and then on line 28, the term "person" is defined as "individuals."

SEN. ECK asked if someone in the director's office would be designated as a mediator, and asked whether that would be a full-time mediator position or someone who does other things. **Mr. Woodgerd** said that is still undecided. He said that presently there are two people in that office that are essentially hearings examiners, and it is being considered that those people will also be trained as mediators as well as hearings examiners.

SEN. ECK then asked if in all cases it would be this person where the issue first comes, or would the Department have a lot of employees who are trained in the area of conflict resolution, and **Mr. Woodgerd** said that that is the goal of the Department, to develop a little better understanding of the taxpayers' concerns on the part of the employees.

Closing by Sponsor:

REP. ANDERSON said that this measure passed the House with a strong majority, so he encouraged passage by the committee.

NOTE: CHAIRMAN DEVLIN resumed the chair.

EXECUTIVE ACTION ON HB 137

Motion/Vote: **SEN. ELLIS** moved HB 137 BE CONCURRED IN. Motion carried 6-0.

CHAIRMAN DEVLIN asked **SEN. ELLIS** to carry this bill.

EXECUTIVE ACTION ON HB 82

Discussion:

SEN. DEPRATU reminded the committee that **REP. HARPER** had mentioned wanting to amend the title to read "submission" rather than "filing." **Mr. Heiman** said that technically, that was correct, that it should read "submission," but that he did not see a problem in leaving it the way it is. The committee decided that it should be changed to make it consistent with the rest of the bill.

Motion/Vote: **SEN. ECK** moved the amendment. Motion carried 6-0.

Motion/Vote: **SEN. ECK** moved HB 82 BE CONCURRED IN AS AMENDED. Motion carried 6-0.

CHAIRMAN DEVLIN asked **SEN. ECK** to carry this bill.

EXECUTIVE ACTION ON HB 138

Motion/Vote: SEN. GLASER moved HB 138 BE CONCURRED IN. Motion carried 7-0.

CHAIRMAN DEVLIN asked SEN. GLASER to carry this bill.

EXECUTIVE ACTION ON HB 139

Motion/Vote: SEN. GLASER moved HB 139 BE CONCURRED IN. Motion carried 7-0.

CHAIRMAN DEVLIN asked SEN. GLASER to carry this bill.

DISCUSSION ON SB 111

CHAIRMAN DEVLIN asked if there was any additional information available on SB 111, and Mary Bryson, Director, Department of Revenue, provided copies of a memo from her to CHAIRMAN DEVLIN regarding intangible property - fiscal impacts, **EXHIBIT (tas32a03)**. She said that the Department has estimated that the fiscal impact of exempting the first \$1 million of market value proposed by SEN. DEPRATU'S amendment, as it relates to the centrally assessed properties, would reduce the fiscal impact to state and local governments to an estimated \$890,000, down from \$9.5 million. She said this estimate is based solely on the impacts of centrally assessed companies, as was the original Fiscal Note.

Ms. Bryson went on to say that the proposed amendment would also produce additional revenues from taxpayers that are currently not being taxed on their intangible property, but the Department cannot offer an estimate of what that impact might be because presently that is not valued.

Ms. Bryson also said the committee had asked a question about what would be the fiscal impact of exempting each or combinations of the intangible property as listed in the proposed legislation, and she said the impact would be somewhere between the \$9.5 million and \$900,000. She said the Department believes that a smaller list of intangibles may produce some intangibles that can be identified and valued, such as liquor licenses. She said that liquor licenses alone could generate between \$6 million and \$7 million in revenue annually. That is separate from the \$1 million exemption. This would be if certain intangibles were required to be subject to taxation. If the \$1 million exemption were in place, that potential revenue would be eliminated because most liquor licenses would fall below the \$1 million in intangibles.

CHAIRMAN DEVLIN asked what the price tag was on each of the three intangibles listed the previous day, and **Ms. Bryson** said the Department could not provide that information because the Department does not collect information related to the value of specific intangibles.

CHAIRMAN DEVLIN asked **Mr. McKelvey** how the State Tax Appeal Board might handle an appeal on the value of goodwill, for instance, and **Mr. McKelvey** said it would depend on whether it was a value determined at the time of a sale. If that were the case, then comparable sales could be considered and a value assigned.

SEN. ELLIS said that he felt the correct policy of this committee would be to make all these things exempt, not just some. He said the committee should address the fiscal impact of the bill as originally offered, and that he felt he was ready to act on the bill.

CHAIRMAN DEVLIN said the committee would not act on **SB 111** today because they wanted more information and would get the amendments taken care of. He reiterated that with the \$1 million exemption, there would be a \$900,000 hit, and **Ms. Bryson** said that was correct, in total, both state and local, so the impact to the General Fund would be much less than that.

SEN. ECK said she could see a good compromise in accepting **SEN. DEPRATU'S** amendment, but she recommended pulling licenses and permits, which have independent value. That would mean that instead of having a \$900,000 hit, it could add \$5 million or \$6 million additional revenue.

SEN. DEPRATU said he would have a problem holding out the licenses and permits just because he feels it is a matter of equity and equality. By classification, they do come under this, and it was not his intention in bringing this bill to put a huge tax burden on one particular segment. **CHAIRMAN DEVLIN** said that another bill could probably be brought in, if this should pass in the form with **SEN. DEPRATU'S** amendments, to address the taxation of some licenses.

SEN. ELLIS said **SEN. ECK'S** point regarding liquor licenses is certainly valid, but the value of those licenses is totally subject to legislative whim, so he would have a problem taxing them.

SEN. GLASER said the value of a license is based on several things, such as the quota, the population being served, the number of people being served per license, and it is a very

dynamic situation. **CHAIRMAN DEVLIN** said that it is the legislature that has caused high-priced liquor licenses.

SEN. DEPRATU said he would like to see another amendment come forward that would eliminate the customer and patient list, the goodwill, and the water and mineral rights, and then have the bill go forward with the \$1 million exemption.

SEN. BOHLINGER said that it seems to him that under present law the legislature is able to extract tax revenue from business owners for intangibles. He said he wasn't sure we needed any changes in the intangible list because these businesses generate profits and they are taxed on their earnings. Those profits are created because of goodwill and customer relationships that have been established, because of franchises, and then when the business owner sells the business and they pay capital gains tax, that encompasses all of these considerations of goodwill, franchises, et cetera.

SEN. DEPRATU asked **Ms. Bryson** what the Department considered a high-priced intangible. He said she had inferred that there might be some businesses out there that are not presently being taxed but would have an intangible value in some form that would exceed the \$1 million limit. He asked if there were some that would offset that other total hit of \$900,000. **Ms. Bryson** said that because the Department concentrates primarily on centrally assessed for intangibles, there are large industrial properties that are locally assessed which have not been taxed. She said she would anticipate that there is a potential that some of those properties would have intangible value that would exceed \$1 million, but she didn't know if that would make up the whole amount.

SEN. GLASER asked **Ms. Bryson** how water rights can be valued, and **Ms. Bryson** said that that is the very issue that the Department has great concern about. She said establishing a value for intangible property is very difficult, and that is why the Department has tried to identify some criteria that could be used for the basis of that determination. In centrally assessed, because the unit is valued as a whole, the Department has not taken steps to actually independently value the intangible property.

SEN. ECK also mentioned mineral rights and asked about valuing those. **Don Hoffman, Department of Revenue**, said that there used to be a provision in the law that talked about severed mineral interests, and that the Department was supposed to attach some value to those. He said the Department was not able to do a very good job of it, and that is why it was repealed. **CHAIRMAN DEVLIN**

said that only two other states had ever tried to do that, and they had both ceased to try because it could not be done in an equitable way.

SEN. ECK then asked about money interest, stocks, et cetera, and **Brian Smith, Department of Revenue**, said that there are some other states, Rhode Island for one, that tax those at a very low rate. **SEN. ECK** said that some time back Montana had decided it was not practical. **SEN. ELLIS** said in that regard, you would get a strong reaction from banks and brokerage houses if transferring funds out of state relieved you of the tax. He said from his perspective, he feels that Montana relies far too heavily on property taxes, and he is not one who wants to go down this road and tax anything that is on this list further than the extent that we do it already.

SEN. GLASER asked the Department of Revenue about the negotiations with the railroads on how much they pay every year. He said they get a bill, they send their lawyers in, the Department negotiates it, and then says, "Okay, we'll settle for this." He wondered how much of it is intangibles that the railroad is using as an argument. **Ms. Bryson** said that some of the value that the Department would attach to the railroad properties is related to intangibles, but because they are taxed on the whole, there is no specific amount for intangibles.

CHAIRMAN DEVLIN said that if anyone had any amendments on this bill, to have them ready for tomorrow and the committee will try to do executive action at that time. He said he has always felt that what is to be taxed should be listed, rather than anything that isn't listed ought to be taxed, and that is why he is in favor of getting rid of the whole list. Then anybody who wants to put them back can bring a bill in and put them back.

ADJOURNMENT

Adjournment: 9:25 A.M.

SEN. GERRY DEVLIN, Chairman

SANDY BARNES, Secretary

GD/SB

EXHIBIT (tas32aad)